

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERMAINE RIOS, #367871,

Petitioner,

v.

CASE NO. 2:11-CV-11019
HONORABLE GEORGE CARAM STEEH

ROBERT NAPEL,

Respondent.

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ORDER DENYING PETITIONER'S MOTION DISCOVERY

Michigan prisoner Dermaine Rios ("Petitioner") has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his Wayne County Circuit Court plea-based conviction for third-degree home invasion, Mich. Comp. Laws § 750.110a(4). He raises claims concerning the voluntariness of his plea, the effectiveness of trial counsel, prosecutorial misconduct, and the denial of transcripts in his petition. This matter is before the Court on Petitioner's motion for discovery, seeking various police reports, notes, and taped conversations.

Pursuant to Rule 5 of the Rules Governing Section 2254 Cases, Respondent is required to submit all transcripts and documents relevant to the determination of the habeas petition at the time the answer is filed. 28 U.S.C. foll. § 2254, Rule 5. The Court may also require that the record be expanded to include additional materials relevant to the determination of the petition. 28 U.S.C. foll. § 2254, Rule 7. Rule 8 of the Rules Governing Section 2254 Cases provides, in pertinent part:

If the petition is not dismissed at a previous stage in the proceeding, the judge, after the answer and the transcript and record of state court proceedings are filed, shall, upon review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required.

Respondent has not yet filed an answer to the habeas petition or the state court record. Until such time as those materials are filed, this Court need not require that additional information be submitted for review. Petitioner's request for discovery is premature.

Moreover, "[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Rule 6 of the Rules Governing Section 2254 Cases provides that a habeas court may authorize a party to conduct discovery upon a showing of good cause. 28 U.S.C. foll. § 2254, Rule 6(a). At this time, Petitioner has not made the requisite showing of "good cause" that the requested items are necessary for the disposition of this case. Accordingly, the Court **DENIES** Petitioner's motion for discovery. Once the answer and Rule 5 materials are filed, the Court will determine if further information is required and enter any appropriate orders. Petitioner need not file any additional motions.

IT IS SO ORDERED.

Dated: June 9, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE
Copies of this Order were served upon attorneys of record on June 9, 2011, by electronic and/or ordinary mail and also to Dermaine Rios at Baraga Maximum Correctional Facility, 13924 Wadaga Road, Baraga, MI 49908.
S/Josephine Chaffee
Deputy Clerk